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**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

MUR: 7493  
DATE COMPLAINT FILED: September 4, 2018  
DATE OF NOTIFICATION: September 10, 2018  
LAST RESPONSE RECEIVED: December 6, 2018  
DATE ACTIVATED: March 7, 2019

EARLIEST SOL: June 14, 2023  
LATEST SOL: August 26, 2023  
ELECTION CYCLE: 2018

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**COMPLAINANT:** Joanna Saccone  
**RESPONDENTS:** Committee to Elect Suraj Patel and Nayna Patel  
in her official capacity as treasurer  
Suraj Patel  
**RELEVANT STATUTE  
AND REGULATION:** 52 U.S.C. § 30102(c)  
11 C.F.R. § 102.9(e)(1)-(3)  
**INTERNAL REPORTS CHECKED:** Disclosure Reports  
**FEDERAL AGENCIES CHECKED:** None

28

**I. INTRODUCTION**

29 The Complaint alleges that then-candidate Suraj Patel ("Patel") and Committee to Elect  
30 Suraj Patel and Nayna Patel in her official capacity as treasurer (the "Committee") violated  
31 11 C.F.R. § 102.9(e)(2) by spending general election funds on primary election expenses, and by  
32 failing to demonstrate that cash on hand was at all times equal to or greater than the sum of  
33 general election contributions received less the sum of general election disbursements made.  
34 The Respondents deny the allegations. As discussed below, we recommend that the Commission  
35 dismiss the allegation that the Committee violated 11 C.F.R. § 102.9(e)(2), find no reason to  
36 believe that Suraj Patel violated 11 C.F.R. § 102.9(e)(2), caution the Committee, and close the  
37 file in this matter.

1 **II. FACTUAL BACKGROUND**

2 Patel was an unsuccessful candidate in the June 26, 2018, Democratic primary election  
3 for the House of Representatives for New York's 12th Congressional District.<sup>1</sup> Patel's principal  
4 campaign committee was the Committee to Elect Suraj Patel and Nayna Patel in her official  
5 capacity as treasurer.<sup>2</sup> The Committee solicited and accepted contributions designated for the  
6 general election before the June 26, 2018, primary election, and it used separate books and  
7 records, but not separate accounts, for each election to distinguish between the primary and  
8 general election contributions.<sup>3</sup>

9 The Committee raised a total of \$210,887.93 in general election contributions for the  
10 primary election.<sup>4</sup> The day before the primary, Patel loaned his Committee \$215,000, and within  
11 38 days of losing the election, he loaned his Committee another \$135,000.<sup>5</sup> The Committee

<sup>1</sup> See *Certified Results for the June 26, 2018 Federal Primary Election*, N.Y. State Bd. of Elections, <https://www.elections.ny.gov/NYSBOE/elections/2018/FederalPrimary/2018CertifiedFederalPrimaryResult.pdf>.

<sup>2</sup> Amended Statement of Organization, The Committee to Elect Suraj Patel (Jan. 29, 2018). After the primary election loss, the Committee, on September 24, 2018, converted to a nonqualified, unauthorized PAC referred to as New Electorate. See Amended Statement of Organization, New Electorate (Sept. 24, 2018). New Electorate's first disclosure report was the 2018 October Quarterly Report. See 2018 October Quarterly Report, New Electorate (formerly Committee to Elect Suraj Patel) (Oct. 15, 2018) ("October Quarterly Report") at <http://docquery.fec.gov/pdf/459/201810159125285459/201810159125285459.pdf>. Its most recent disclosure report filed, the 2018 Year-End Report, reflects an ending cash on hand balance of \$616.59. See 2018 Year End Report, New Electorate (Jan. 31, 2018).

<sup>3</sup> Response at 2-6, Committee to Elect Suraj Patel (Dec. 6, 2018) ("Response"); see also 11 C.F.R. § 102.9(e)(1)(providing examples how candidate may account for general election contributions received before the primary election).

<sup>4</sup> See 2018 Pre-Primary Report, Committee to Elect Suraj Patel (June 14, 2018) ("Pre-Primary Report") at <http://docquery.fec.gov/pdf/373/201806149113699373/201806149113699373.pdf>; 2018 July Quarterly Report, Committee to Elect Suraj Patel (July 15, 2018) ("July Quarterly Report") at <http://docquery.fec.gov/pdf/754/201807159115656754/201807159115656754.pdf>.

<sup>5</sup> See July Quarterly Report (\$215,000 candidate loan made on June 25, 2018); October Quarterly Report (\$85,000 candidate loan on July 6, 2018 + \$50,000 candidate loan on August 3, 2018). The Committee's amended 2018 Post General Report discloses that Patel forgave \$50,000 of the \$215,000 loan on June 30, 2018, thereby reducing the loan balance to \$165,000. See Amended 2018 Post-General Report, New Electorate (Dec. 6, 2018) at <http://docquery.fec.gov/pdf/947/201812069134952947/201812069134952947.pdf>. Patel was not required to file a 48-hour contribution report for the \$215,000 loan because he made the loan within 24 hours of the primary election, which was outside the reporting window. See 11 C.F.R. § 104.5(f). In addition, Patel made two primary election contributions totaling \$6,802.20 (\$5,777 and \$1,025.20). See Amended 2017 Year-End Report, Committee to Elect

1 refunded or redesignated all of the general election contributions by August 6, 2018, which was  
2 within 40 days of the primary.<sup>6</sup>

3 The Complaint states that although the Committee raised over \$200,000 in general  
4 election contributions at the time it filed its Pre-Primary Report, its report disclosed an ending  
5 cash on hand balance of only \$40,526.70, an indication that it was using general election  
6 contributions to pay for primary election expenses in violation of 11 C.F.R. § 102.9(e)(2).<sup>7</sup> The  
7 Complaint further states that the Committee's expenditures do not reflect that general election  
8 contributions "were spent for the exclusive purpose of influencing the prospective general  
9 election" and that the Committee failed to keep cash on hand "at least equal to all general  
10 election contributions received minus the sum of all general election disbursements made"<sup>8</sup>

11 Respondents assert that the Committee had at its disposal funds in excess of all general  
12 election contributions received because Patel pledged to support his candidacy with personal  
13 funds, and, in fact, made several contributions and loans to the Committee.<sup>9</sup> Respondents further

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Suraj Patel (Apr. 14, 2018) ("Amended Year-End Report") at  
<http://docquery.fec.gov/pdf/662/201804149108076662/201804149108076662.pdf>. 2018 April Quarterly Report,  
Committee to Elect Suraj Patel (Apr. 15, 2018) ("April Quarterly Report") at  
<http://docquery.fec.gov/pdf/405/201804159108176405/201804159108176405.pdf>.

<sup>6</sup> All of the general election contribution refunds (\$210,788.93) and redesignations (\$99) were completed during the October 2018 reporting period. *See* October Quarterly Report.

<sup>7</sup> Compl. at 3. A review of the April Quarterly Report indicates a beginning cash on hand balance of \$450,726.50, net contributions totaling \$533,155.28 (of which \$145,949.70 was for the general election and \$368,110.29 was for the primary election), disbursements of \$386,475.11, and an ending cash on hand balance of \$601,132.76. *See* April Quarterly Report. Further, a review of the Year-End Report indicates a beginning cash on hand balance of \$0, net contributions totaling \$544,642.76 (of which \$44,106.95 was for the general election and \$486,424.79 was for the primary election), disbursements of \$98,906.18, and an ending cash on hand balance of \$450,726.59. *See* Amended Year-End Report. Thus, there was no indication of any issues with the Committee's cash on hand balances in relation to the amount of its general election contributions before the Committee filed its Pre-Primary Report.

<sup>8</sup> Compl. at 5.

<sup>9</sup> *Id.* at 3. The Response does not provide specific information how Patel structured his finances to support his candidacy before the primary election, other than the \$350,000 in personal funds he loaned to the Committee.

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1 assert that the Commission has never concluded that personal funds set aside by the candidate for  
2 a contribution or loan to their campaign must be excluded from the definition of a committee's  
3 "records," and that a reasonable interpretation of section 102.9(e) is that a campaign's funds  
4 include not only the authorized committee's cash on hand but also the permissible personal funds  
5 set aside by the candidate for a loan or contribution to the authorized committee.<sup>10</sup>

6 Alternatively, the Respondents contend that the Commission's guidance, advisory  
7 opinions, and enforcement matters related to section 102.9(e)(2) have focused not on a  
8 committee's cash on hand during the primary election period, but on whether the committee  
9 ultimately makes all necessary refunds, redesignations, and reattributions within 60 days of the  
10 primary election.<sup>11</sup> Respondents argue that the matter should be dismissed because it raises an  
11 inadvertent "cash flow accounting" situation that the Committee quickly identified and addressed  
12 with a \$215,000 candidate loan, and the Committee made all the necessary refunds and  
13 redesignations of general election contributions within the required 60-day time period.<sup>12</sup>

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<sup>10</sup> *Id.* According to the Response, the Commission has never provided "detailed guidance" on which amounts are included in a candidate or authorized committee's "records" for the purposes of complying with section 102.9(e)(2). In addition, the Response asserts that the key phrase "recorded cash on hand" is not defined in the Commission regulations nor has the Commission expressly stated that "cash on hand" for the purposes of maintaining these records is equivalent to a committee's cash on hand for other reporting purposes. *Id.*; see also 11 C.F.R. § 104.3(a)(1).

<sup>11</sup> Resp. at 5; see also *id.* at 4 (citing Fed. Election Commission, Campaign Guide for Congressional Candidates and Committees at 21 (June 2014); Advisory Opinion 2015-16 (Niger Innis for Congress) at 3-4; Advisory Opinion 2009-15 (Bill White for Texas) at 7; Advisory Opinion 2003-18 (Smith) at 2-3; Advisory Opinion 1992-15 (Russo for Congress Committee) at 2; AO 1986-17 (Friends of Mark Green) at 4.

<sup>12</sup> Resp. at 5. The Response does not explain why the Committee did not realize that its primary election spending was outpacing its primary election contributions. Patel made the loan eleven days after the Committee's Pre-Primary Report indicated that there was a deficit in its cash on hand balance compared to its general election contributions received less any general election disbursements made. See Pre-Primary Report and July Quarterly Report. After the loan to the Committee, its cash on hand balance increased from \$40,526.70 to \$211,108.71, more than the \$210,887.93 it had received in general election contributions. See July Quarterly Report.

1 **III. LEGAL ANALYSIS**

2 The Act requires treasurers to keep an account of all contributions received by a political  
3 committee.<sup>13</sup> The Commission's regulations permit a candidate's committee to receive  
4 contributions for the general election prior to the primary election provided the committee  
5 employs an acceptable accounting method to distinguish between primary and general election  
6 contributions.<sup>14</sup> The committee's records must demonstrate that prior to the primary election,  
7 the committee's "recorded cash on hand was *at all times* equal to or in excess of the sum of  
8 general election contributions received less the sum of general election disbursements made."<sup>15</sup>

9 The Commission has noted that "[t]hese regulations are designed to ensure that  
10 candidates . . . do not use general election contributions for the primary election."<sup>16</sup> Commission  
11 regulations further provide that if a candidate's authorized committee raises general election  
12 funds prior to the primary election, but the candidate does not become a candidate in the general  
13 election, the committee has 60 days to refund, reattribute, or redesignate the general election  
14 contributions.<sup>17</sup>

15 The Committee's Pre-Primary Report confirms that it received a total of \$192,756.65 in  
16 general election contributions as of June 14, 2018, made no general election disbursements  
17 during the same time period, and had an ending cash on hand balance of \$40,526.70.<sup>18</sup> Thus, the

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<sup>13</sup> 52 U.S.C. § 30102(c).

<sup>14</sup> 11 C.F.R. § 102.9(e)(1).

<sup>15</sup> *Id.* § 102.9(e)(2)(emphasis added).

<sup>16</sup> See AO 1992-15 (Russo for Congress) at 1.

<sup>17</sup> *Id.* § 102.9(e)(3). A committee cannot redesignate general election funds to the primary election if doing so would cause the contributor to exceed the maximum allowable contribution for that election. *Id.*

<sup>18</sup> See Pre-Primary Report.

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1 record shows that the Committee spent approximately \$152,229.95 in general election funds for  
2 primary election expenses in violation of section 102.9(e)(2). Patel's loan to the Committee one  
3 day before the primary election to replace the general election contributions improperly used  
4 does not vitiate the violation because the information indicates that the Committee's recorded  
5 cash on hand did not at all times equal the general election contributions received minus general  
6 election disbursements made.

7 However, we recommend the Commission dismiss the Complaint.<sup>19</sup> In similar  
8 enforcement matters, the Commission has taken into consideration various factors in making its  
9 findings, such as the amount of the deficit, whether the committee used any of the funds for  
10 legitimate prospective general election expenses, and whether the use of general election  
11 contributions for primary election expenses prevented a committee from making the necessary  
12 refunds, reattributions, or redesignations once it became clear the candidate was not going to  
13 participate in the general election. The Commission has routinely found reason to believe and  
14 sought a civil penalty when a committee has violated section 102.9(e) and did not make the  
15 necessary refunds within 60 days.<sup>20</sup> Conversely, the Commission has dismissed matters where  
16 the committee violated the regulation but made timely refunds.<sup>21</sup> For example, in MURs 6295

<sup>19</sup> Respondents' assertion that section 102.9(e)(2) can be interpreted in such a way that a campaign's records includes not only the authorized committee's cash on hand for reporting purposes, but also the permissible personal funds set aside by the candidate for loan or contribution to their authorized committee is unpersuasive. *See Resp.* at 3. Respondents have provided no specific information regarding the manner by which Patel "set aside" personal funds for loan or contribution to the Committee, and Respondents' argument is contrary to the provisions of the Act requiring committee receipts to be deposited into a designated campaign depository. 52 U.S.C. § 3012(h). Further, maintaining funds that may belong to the Committee in an account belonging to the candidate could also run afoul of the Act's prohibition against the commingling of committee funds with personal funds. 52 U.S.C. § 30102(b)(3).

<sup>20</sup> *See e.g.*, Conciliation Agreement at 4-5, MUR 7007 (Kyle McCarter for Congress Committee); Conciliation Agreement at 4, MUR 6956 (Espaillat for Congress); Conciliation Agreement at 3, MUR 6887 (McCotter Congressional Committee).

<sup>21</sup> *See, e.g.*, Frank Guinta F&LA at 7-8; Marjorie 2014 F&LA at 5-6; Sue Lowden F&LA at 9. In Guinta, the deficit in the committee's cash on hand balance was the result of refunds it made to comply with a Conciliation Agreement in another Enforcement matter. Further, Guinta's candidacy in the general election alleviated the concern of sufficient general election funds. Frank Guinta F&LA at 7-8. In Marjorie 2014, the committee was able



1 filing of its Pre-Primary Report and one day before the primary election) when Patel loaned the  
2 Committee \$215,000, which essentially replaced the general election contributions and  
3 eliminated the cash on hand deficit.<sup>24</sup> In addition, the Committee completed its refunds and  
4 redesignations of \$210,877.93 twenty days earlier than the required 60-day time period.

5 Based on these specific facts and circumstances, we recommend that the Commission  
6 dismiss the allegation that the Respondents violated 11 C.F.R. § 102.9(e)(2).<sup>25</sup> In addition, we  
7 recommend that the Commission find no reason to believe that Suraj Patel, in his individual  
8 capacity, violated 11 C.F.R. § 102.9(e)(2) since there is no information to suggest that Patel was  
9 personally involved in any of the Committee's actions that led to the violation. However, based  
10 on the large percentage of general election contributions improperly used to pay primary election  
11 expenses, we recommend that the Commission caution the Committee regarding the  
12 requirements of section 102.9(e) and close the file.<sup>26</sup>

13 **IV. RECOMMENDATIONS**

- 14 1. Dismiss the allegation that the Committee to Elect Suraj Patel and Nayna Patel in her  
15 official capacity as treasurer violated 11 C.F.R. § 102.9(e)(2) by failing to maintain a  
16 recorded cash on hand balance in excess of the sum of all general election  
17 contributions less the sum of all general election disbursements made by the  
18 Committee.  
19  
20 2. Find no reason to believe that Suraj Patel violated 11 C.F.R. § 102.9(e)(2).  
21  
22 3. Approve a caution letter.  
23  
24 4. Approve the attached Factual and Legal Analysis.  
25

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<sup>24</sup> The Committee's disclosure reports filed before the Pre-Primary Report (Year-End and April Quarterly Reports) show no indication of a deficit in the Committee's cash on hand balance in comparison to the amount of general election contribution received minus general election disbursements. *See supra* note 7.

<sup>25</sup> *See Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>26</sup> The Commission cautioned the Lowden Committee for its improper use of general election contributions for primary election expenses. *See* Closing Letters, MURs 6295 and 6307 (Sue Lowden for Senate) (Dec. 17, 2010), and we recommend that the Commission do likewise in this case.

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**MUR:** 7493

**RESPONDENTS:** Committee to Elect Suraj Patel and Nayna Patel in his official capacity as treasurer

Suraj Patel

**I. INTRODUCTION**

The Complaint alleges that then-candidate Suraj Patel (“Patel”) and Committee to Elect Suraj Patel and Nayna Patel in her official capacity as treasurer (the “Committee”) violated 11 C.F.R. § 102.9(e)(2) by spending general election funds on primary election expenses and by failing to demonstrate that cash on hand was at all times equal to or greater than the sum of general election contributions received less the sum of general election disbursements made.

The Respondents deny the allegations. As discussed below, the Commission dismisses the allegation that the Committee violated 11 C.F.R. § 102.9(e)(2), finds no reason to believe that Suraj Patel violated 11 C.F.R. § 102.9(e)(2), cautions the Committee, and closes the file in this matter.

**II. FACTUAL BACKGROUND**

Patel was an unsuccessful candidate in the June 26, 2018, Democratic primary election for the House of Representatives for New York’s 12th Congressional District.<sup>1</sup> Patel’s principal campaign committee was the Committee to Elect Suraj Patel and Nayna Patel in her official capacity as treasurer.<sup>2</sup> The Committee solicited and accepted contributions designated for the

<sup>1</sup> See *Certified Results for the June 26, 2018 Federal Primary Election*, N.Y. State Bd. of Elections, <https://www.elections.ny.gov/NYSBOE/elections/2018/FederalPrimary/2018CertifiedFederalPrimaryResult.pdf>.

<sup>2</sup> Amended Statement of Organization, The Committee to Elect Suraj Patel (Jan. 29, 2018). After the primary election loss, the Committee, on September 24, 2018, converted to a nonqualified, unauthorized PAC referred to as New Electorate. See Amended Statement of Organization, New Electorate (Sept. 24, 2018). New

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1 general election before the June 26, 2018, primary election, and it used separate books and  
2 records, but not separate accounts, for each election to distinguish between the primary and  
3 general election contributions.<sup>3</sup>

4 The Committee raised a total of \$210,887.93 in general election contributions for the  
5 primary election.<sup>4</sup> The day before the primary, Patel loaned his Committee \$215,000, and within  
6 38 days of losing the election, he loaned his Committee another \$135,000.<sup>5</sup> The Committee  
7 refunded or redesignated all of the general election contributions by August 6, 2018, which was  
8 within 40 days of the primary.<sup>6</sup>

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Electorate's first disclosure report was the 2018 October Quarterly Report. *See* 2018 October Quarterly Report, New Electorate (formerly Committee to Elect Suraj Patel) (Oct. 15, 2018) ("October Quarterly Report") at <http://docquery.fec.gov/pdf/459/201810159125285459/201810159125285459.pdf>. Its most recent disclosure report filed, the 2018 Year-End Report, reflects an ending cash on hand balance of \$616.59. *See* 2018 Year End Report, New Electorate (Jan. 31, 2018).

<sup>3</sup> Response at 2-6, Committee to Elect Suraj Patel (Dec. 6, 2018) ("Response"); *see also* 11 C.F.R. § 102.9(e)(1)(providing examples how candidate may account for general election contributions received before the primary election).

<sup>4</sup> *See* 2018 Pre-Primary Report, Committee to Elect Suraj Patel (June 14, 2018) ("Pre-Primary Report") at <http://docquery.fec.gov/pdf/373/201806149113699373/201806149113699373.pdf>; 2018 July Quarterly Report, Committee to Elect Suraj Patel (July 15, 2018) ("July Quarterly Report") at <http://docquery.fec.gov/pdf/754/201807159115656754/201807159115656754.pdf>.

<sup>5</sup> *See* July Quarterly Report (\$215,000 candidate loan made on June 25, 2018); October Quarterly Report (\$85,000 candidate loan on July 6, 2018 + \$50,000 candidate loan on August 3, 2018). The Committee's amended 2018 Post General Report discloses that Patel forgave \$50,000 of the \$215,000 loan on June 30, 2018, thereby reducing the loan balance to \$165,000. *See* Amended 2018 Post-General Report, New Electorate (Dec. 6, 2018) at <http://docquery.fec.gov/pdf/947/201812069134952947/201812069134952947.pdf>. Patel was not required to file a 48-hour contribution report for the \$215,000 loan because he made the loan within 24 hours of the primary election, which was outside the reporting window. *See* 11 C.F.R. § 104.5(f). In addition, Patel made two primary election contributions totaling \$6,802.20 (\$5,777 and \$1,025.20). *See* Amended 2017 Year-End Report, Committee to Elect Suraj Patel (Apr. 14, 2018) ("Amended Year-End Report") at <http://docquery.fec.gov/pdf/662/201804149108076662/201804149108076662.pdf>. 2018 April Quarterly Report, Committee to Elect Suraj Patel (Apr. 15, 2018) ("April Quarterly Report") at <http://docquery.fec.gov/pdf/405/201804159108176405/201804159108176405.pdf>.

<sup>6</sup> All of the general election contribution refunds (\$210,788.93) and redesignations (\$99) were completed during the October 2018 reporting period. *See* October Quarterly Report.

1           The Complaint states that although the Committee raised over \$200,000 in general  
2 election contributions at the time it filed its Pre-Primary Report, its report disclosed an ending  
3 cash on hand balance of only \$40,526.70, an indication that it was using general election  
4 contributions to pay for primary election expenses in violation of 11 C.F.R. § 102.9(e)(2).<sup>7</sup> The  
5 Complaint further states that the Committee's expenditures do not reflect that general election  
6 contributions "were spent for the exclusive purpose of influencing the prospective general  
7 election" and that the Committee failed to keep cash on hand "at least equal to all general  
8 election contributions received minus the sum of all general election disbursements made"<sup>8</sup>

9           Respondents assert that the Committee had at its disposal funds in excess of all general  
10 election contributions received because Patel pledged to support his candidacy with personal  
11 funds, and, in fact, made several contributions and loans to the Committee.<sup>9</sup> Respondents further  
12 assert that the Commission has never concluded that personal funds set aside by the candidate for  
13 a contribution or loan to their campaign must be excluded from the definition of a committee's  
14 "records," and that a reasonable interpretation of section 102.9(e) is that a campaign's funds

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<sup>7</sup> Compl. at 3. A review of the April Quarterly Report indicates a beginning cash on hand balance of \$450,726.50, net contributions totaling \$533,155.28 (of which \$145,949.70 was for the general election and \$368,110.29 was for the primary election), disbursements of \$386,475.11, and an ending cash on hand balance of \$601,132.76. See April Quarterly Report. Further, a review of the Year-End Report indicates a beginning cash on hand balance of \$0, net contributions totaling \$544,642.76 (of which \$44,106.95 was for the general election and \$486,424.79 was for the primary election), disbursements of \$98,906.18, and an ending cash on hand balance of \$450,726.59. See Amended Year-End Report. Thus, there was no indication of any issues with the Committee's cash on hand balances in relation to the amount of its general election contributions before the Committee filed its Pre-Primary Report.

<sup>8</sup> Compl. at 5.

<sup>9</sup> *Id.* at 3. The Response does not provide specific information how Patel structured his finances to support his candidacy before the primary election, other than the \$350,000 in personal funds he loaned to the Committee.

1 include not only the authorized committee's cash on hand but also the permissible personal funds  
2 set aside by the candidate for a loan or contribution to the authorized committee.<sup>10</sup>

3 Alternatively, the Respondents contend that the Commission's guidance, advisory  
4 opinions, and enforcement matters related to section 102.9(e)(2) have focused not on a  
5 committee's cash on hand during the primary election period, but on whether the committee  
6 ultimately makes all necessary refunds, redesignations, and reattributions within 60 days of the  
7 primary election.<sup>11</sup> Respondents argue that the matter should be dismissed because it raises an  
8 inadvertent "cash flow accounting" situation that the Committee quickly identified and addressed  
9 with a \$215,000 candidate loan, and the Committee made all the necessary refunds and  
10 redesignations of general election contributions within the required 60-day time period.<sup>12</sup>

### 11 III. LEGAL ANALYSIS

12 The Act requires treasurers to keep an account of all contributions received by a political  
13 committee.<sup>13</sup> The Commission's regulations permit a candidate's committee to receive  
14 contributions for the general election prior to the primary election provided the committee

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<sup>10</sup> *Id.* According to the Response, the Commission has never provided "detailed guidance" on which amounts are included in a candidate or authorized committee's "records" for the purposes of complying with section 102.9(e)(2). In addition, the Response asserts that the key phrase "recorded cash on hand" is not defined in the Commission regulations nor has the Commission expressly stated that "cash on hand" for the purposes of maintaining these records is equivalent to a committee's cash on hand for other reporting purposes. *Id.*; see also 11 C.F.R. § 104.3(a)(1).

<sup>11</sup> Resp. at 5; see also *id.* at 4 (citing Fed. Election Commission, Campaign Guide for Congressional Candidates and Committees at 21 (June 2014); Advisory Opinion 2015-16 (Niger Innis for Congress) at 3-4; Advisory Opinion 2009-15 (Bill White for Texas) at 7; Advisory Opinion 2003-18 (Smith) at 2-3; Advisory Opinion 1992-15 (Russo for Congress Committee) at 2; AO 1986-17 (Friends of Mark Green) at 4.

<sup>12</sup> Resp. at 5. The Response does not explain why the Committee did not realize that its primary election spending was outpacing its primary election contributions. Patel made the loan eleven days after the Committee's Pre-Primary Report indicated that there was a deficit in its cash on hand balance compared to its general election contributions received less any general election disbursements made. See Pre-Primary Report and July Quarterly Report. After the loan to the Committee, its cash on hand balance increased from \$40,526.70 to \$211,108.71, more than the \$210,887.93 it had received in general election contributions. See July Quarterly Report.

<sup>13</sup> 52 U.S.C. § 30102(c).

1 employs an acceptable accounting method to distinguish between primary and general election  
2 contributions.<sup>14</sup> The committee's records must demonstrate that prior to the primary election,  
3 the committee's "recorded cash on hand was *at all times* equal to or in excess of the sum of  
4 general election contributions received less the sum of general election disbursements made."<sup>15</sup>

5 The Commission has noted that "[t]hese regulations are designed to ensure that  
6 candidates . . . do not use general election contributions for the primary election."<sup>16</sup> Commission  
7 regulations further provide that if a candidate's authorized committee raises general election  
8 funds prior to the primary election, but the candidate does not become a candidate in the general  
9 election, the committee has 60 days to refund, reattribute, or redesignate the general election  
10 contributions.<sup>17</sup>

11 The Committee's Pre-Primary Report confirms that it received a total of \$192,756.65 in  
12 general election contributions as of June 14, 2018, made no general election disbursements  
13 during the same time period, and had an ending cash on hand balance of \$40,526.70.<sup>18</sup> The  
14 Commission dismisses the Complaint.<sup>19</sup> In similar enforcement matters, the Commission has

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<sup>14</sup> 11 C.F.R. § 102.9(e)(1).

<sup>15</sup> *Id.* § 102.9(e)(2)(emphasis added).

<sup>16</sup> *See* AO 1992-15 (Russo for Congress) at 1.

<sup>17</sup> *Id.* § 102.9(e)(3). A committee cannot redesignate general election funds to the primary election if doing so would cause the contributor to exceed the maximum allowable contribution for that election. *Id.*

<sup>18</sup> Respondents' assertion that section 102.9(e)(2) can be interpreted in such a way that a campaign's records includes not only the authorized committee's cash on hand for reporting purposes, but also the permissible personal funds set aside by the candidate for loan or contribution to their authorized committee is unpersuasive. *See* Resp. at 3. Respondents have provided no specific information regarding the manner by which Patel "set aside" personal funds for loan or contribution to the Committee, and Respondents' argument is contrary to the provisions of the Act requiring committee receipts to be deposited into a designated campaign depository. 52 U.S.C. § 3012(h). Further, maintaining funds that may belong to the Committee in an account belonging to the candidate could also run afoul of the Act's prohibition against the commingling of committee funds with personal funds. 52 U.S.C. § 30102(b)(3).

<sup>19</sup> Respondents' assertion that section 102.9(e)(2) can be interpreted in such a way that a campaign's records includes not only the authorized committee's cash on hand for reporting purposes, but also the permissible personal funds set aside by the candidate for loan or contribution to their authorized committee is unpersuasive. *See* Resp. at

1 taken into consideration various factors in making its findings, such as the amount of the deficit,  
2 whether the committee used any of the funds for legitimate prospective general election  
3 expenses, and whether the use of general election contributions for primary election expenses  
4 prevented a committee from making the necessary refunds, reattributions, or redesignations once  
5 it became clear the candidate was not going to participate in the general election. The  
6 Commission has routinely found reason to believe and sought a civil penalty when a committee  
7 has violated section 102.9(e) and did not make the necessary refunds within 60 days.<sup>20</sup>  
8 Conversely, the Commission has dismissed matters where the committee violated the regulation  
9 but made timely refunds.<sup>21</sup> For example, in MURs 6295 and 6307 (Sue Lowden for US Senate),  
10 the Commission concluded that the committee violated section 102.9(e) when it used \$18,000 in  
11 general election funds to finance primary election expenses.<sup>22</sup> However, it ultimately dismissed  
12 the matter because the amount at issue involved only a fraction (about 8%) of its overall general

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3. Respondents have provided no specific information regarding the manner by which Patel “set aside” personal funds for loan or contribution to the Committee, and Respondents’ argument is contrary to the provisions of the Act requiring committee receipts to be deposited into a designated campaign depository. 52 U.S.C. § 3012(h). Further, maintaining funds that may belong to the Committee in an account belonging to the candidate could also run afoul of the Act’s prohibition against the commingling of committee funds with personal funds. 52 U.S.C. § 30102(b)(3).

<sup>20</sup> See e.g., Conciliation Agreement at 4-5, MUR 7007 (Kyle McCarter for Congress Committee); Conciliation Agreement at 4, MUR 6956 (Espaillat for Congress); Conciliation Agreement at 3, MUR 6887 (McCotter Congressional Committee).

<sup>21</sup> See e.g., Frank Guinta F&LA at 7-8; Marjorie 2014 F&LA at 5-6; Sue Lowden F&LA at 9. In Guinta, the deficit in the committee’s cash on hand balance was the result of refunds it made to comply with a Conciliation Agreement in another Enforcement matter. Further, Guinta’s candidacy in the general election alleviated the concern of sufficient general election funds. Frank Guinta F&LA at 7-8. In Marjorie 2014, the committee was able to demonstrate that its cash on hand deficit of \$71,427 was offset by advance payments for potential general election campaign expenses that eliminated the deficit. Marjorie F&LA at 5-6.

In this case, the Committee alludes to the possibility that amounts previously reported as primary election expenses, such as advance rental payments for a general election office, could possibly be redesignated to the general election, thereby reducing any cash on hand deficit. However, it has provided no information regarding the specific primary election disbursements that might fall into this category. Resp. at 4.

<sup>22</sup> Sue Lowden F&LA at 9.

1 election contributions, the funds were used as a result of a cash flow accounting issue, and the  
2 committee made timely contribution refunds after the loss of the primary election.<sup>23</sup> It does not  
3 appear that the Commission has pursued enforcement actions for a violation of 11 C.F.R.  
4 § 102.9(e)(2) without a concurrent failure of a committee to timely refund, redesignate, or  
5 reattribute general election contributions.

6 We conclude that dismissal is appropriate because the Committee took steps to rectify the  
7 situation on June 25, 2018, (eleven days after the filing of its Pre-Primary Report and one day  
8 before the primary election) when Patel loaned the Committee \$215,000, which essentially  
9 replaced the general election contributions and eliminated the cash on hand deficit.<sup>24</sup> In addition,  
10 the Committee completed its refunds and redesignations of \$210,877.93 twenty days earlier than  
11 the required 60-day time period.

12 Based on these specific facts and circumstances, the Commission dismisses the allegation  
13 that the Respondents violated 11 C.F.R. § 102.9(e)(2).<sup>25</sup> In addition, the Commission finds no  
14 reason to believe that Suraj Patel, in his individual capacity, violated 11 C.F.R. § 102.9(e)(2)  
15 since there is no information to suggest that Patel was personally involved in any of the  
16 Committee's actions that led to the violation. However, based on the large percentage of general

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<sup>23</sup> *Id.*; see also Factual and Legal Analysis at 7-8, MURs 7093 and 7145 (Friends of Frank Guinta); Factual and Legal Analysis at 9, MUR 6811 (Marjorie 2014); Factual and Legal Analysis at 7-8, MURs 6295 and 6307 (Sue Lowden for US Senate).

<sup>24</sup> The Committee's disclosure reports filed before the Pre-Primary Report (Year-End and April Quarterly Reports) show no indication of a deficit in the Committee's cash on hand balance in comparison to the amount of general election contribution received minus general election disbursements. See *supra* note 7.

<sup>25</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

- 1 election contributions improperly used to pay primary election expenses, the Commission
- 2 cautions the Committee regarding the requirements of section 102.9(e) and close the file.<sup>26</sup>

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<sup>26</sup> The Commission cautioned the Lowden Committee for its improper use of general election contributions for primary election expenses. *See* Closing Letters, MURs 6295 and 6307 (Sue Lowden for Senate) (Dec. 17, 2010), and the Commission does likewise in this case.

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